

STATE OF CONNECTICUT
STATE ELECTIONS ENFORCEMENT COMMISSION

In the Matter of a Complaint by
Daniel Borchers, Odenton, Maryland

File No. 2009-010

FINDINGS AND CONCLUSIONS

The Complainant brings this complaint pursuant to Connecticut General Statutes § 9-7b and asserts that Ann H. Coulter (hereinafter "the Respondent") voted by absentee ballot in New Canaan, Connecticut on November 5, 2002 and November 2, 2004, although she was not a bona fide resident, in violation of General Statutes §§ 9-172, 9-359a & 9-360.

After the investigation of the complaint, the Commission makes the following findings and conclusions:

1. Complainant alleges that in 2002 and 2004, the Respondent was registered to vote at an address in New Canaan, Connecticut and voted by absentee ballot there in the general elections held in each of those years. Complainant alleges that the Respondent was not a bona fide resident at the address, her parents' residence, at either time, but was a bona fide resident in the state of New York on both occasions.
2. The main issue in the present case is whether the Respondent was qualified to vote in New Canaan on November 5, 2002 and November 2, 2004. General Statutes § 9-12 (a) (Rev. to Sep. 30, 2007)¹ concerns elector qualifications. Between 1973 and October, 2007, it provided in pertinent part:

Each citizen of the United States who has attained the age of eighteen years, and who is a bona fide resident of the town to which the citizen applies for admission as an elector shall, . . . as prescribed by law, be an elector, . . . (Emphasis added.)

3. General Statutes § 9-172 also states that only individuals who are bona fide residents of the town in which they are offering to vote will be permitted to vote in *state* elections. It specifically provides in part that:

At any regular or special state election *any person may vote who was registered on the last-completed revised registry list of the town in which he offers to vote, and he shall vote in the district in which he was so registered; . . . Each person so registered shall be permitted to vote if he is a bona fide resident of the town and political subdivision holding the election and has not lost his right by conviction of a disfranchising crime.* . . . (Emphasis added.)

¹ Public Acts, Spec. Sess., June, 2003, No. 03-6, which became law between the two events alleged in the instant Complaint, made insubstantial technical changes for purpose of gender neutrality.

4. Furthermore, General Statutes § 9-359a provides in relevant part as follows:

A person is guilty of false statement in absentee balloting when he intentionally makes a false written statement in or on . . . the application for an absentee ballot or the inner envelope accompanying any such ballot, which he does not believe to be true and which statement or signature is intended to mislead a public servant in the performance of his official function. . . .

5. Furthermore, General Statutes § 9-360 provides in relevant part as follows:

Any person *not legally qualified* who *fraudulently* votes in any town meeting, primary or election in which he is not qualified to vote . . . shall be fined not less than three hundred dollars nor more than five hundred dollars and shall be imprisoned not less than one year nor more than two years and shall be disfranchised. . . . (Emphasis added.)

6. No one contests that the Respondent was a citizen of the United States and had attained the age of eighteen years by November 5, 2002. As such, the determinative issue is whether the Respondent was a “bona fide resident” of New Canaan at the relevant times. If not, the Respondent will face liability for violating General Statutes §§ 9-172, 9-359a and 9-360.
7. According to the Commission, an individual’s bona fide residence is the place where that individual maintains a true, fixed, and principal home to which he or she, whenever transiently relocated, has a genuine intent to return. *See, e.g., Complaint of Gary Amato, North Haven*, File No. 2009-158 (2010); *Complaint of Cicero Booker, Waterbury*, File No. 2007-157. In other words, “bona fide residence” is generally synonymous with domicile. *Id.*; *cf. Hackett v. The City of New Haven*, 103 Conn. 157 (1925). The Commission has concluded, however, that “[t]he traditional rigid notion of ‘domicile’ has . . . given way somewhat but only to the extent that it has become an impractical standard for the purposes of determining voting residence (i.e., with respect to college students, the homeless, and individuals with multiple dwellings).” *Complaint of James Cropsey, Tilton, New Hampshire*, File No. 2008-047 (Emphasis added.). *See also Wit v. Berman*, 306 F.3d 1256, 1262 (2d Cir. 2002) (stating that under certain circumstances the domicile rule for voting residency can give rise to administrative difficulties which has led to a pragmatic application of that rule in New York); *Sims v. Vernon*, Superior Court, Fairfield County, No. 168024 (Dec. 22, 1977) (concluding in a case with similar facts to those presented here that an absentee ballot of an individual should be counted as that individual was a bona fide resident of the town in which the ballot was cast.); *Farley v. Louzitis*, Superior Court, New London County, No. 41032 (Oct. 4, 1972) (considering issue of voter residency with respect to college students and stating that “a student, and a nonstudent as well, who satisfies the . . . residence requirement, may vote where he resides, without regard to the duration of his anticipated stay or the existence of another residence elsewhere. It is for him alone to say whether his voting interests at the residence he selects exceed his voting interests elsewhere.”) (Emphasis added.).

8. The Commission has previously concluded that “[a]n individual does not, therefore, have to intend to remain at a residence for an indefinite period for that residence to qualify as that individual’s bona fide residence. *Complaint of James Cropsey, Tilton, New Hampshire*, File No. 2008-047. Rather, the individual only has to possess a present intention to remain at that residence. *Id.*
9. As such, where an individual truly maintains two residences to which the individual has legitimate, significant, and continuing attachments, that individual can choose either one of those residences to be their bona fide residence for the purposes of election law so long as they possess the requisite intent. *Id.*, see also *Wit*, 306 F.3d at 1262 (quoting *People v. O’Hara*, 96 N.Y.2d 378, 385 (2001) for this principle.)
10. Thus, the issues in the present matter are whether 1) the Respondent truly resided at her childhood home in New Canaan when she voted in that town on November 5, 2002 and November 2, 2004 and, if so, 2) whether she had legitimate, significant, and continuing attachments to that home.
11. As with any bona fide residence inquiry, the answers to those questions turn entirely on the specific facts of this case.
12. Here, the Respondent admits, and the evidence shows, that she voted by absentee ballot in New Canaan on November 5, 2002 and November 2, 2004, but maintains that she did so lawfully because she was, at both of those times, a bona fide resident of New Canaan for the purposes of General Statutes § 9-12 (Rev. to Sep. 30, 2007). Specifically, she asserts that she maintained a bona fide residence at a property which at all relevant times was owned by her parents.²
13. Here, the evidence shows that the Respondent first registered as a voter at the address in New Canaan at issue here on or about January 8, 1980. The evidence also shows that she maintained this registration for over twenty-six (26) years until on or about August 17, 2006 when she submitted a request in writing to the New Canaan Registrar’s Office that she be removed.³ The investigation revealed no indication that she registered and/or voted in any other place during that time period. The evidence also shows that after the aforementioned date, the Respondent registered to vote in the State of Florida and has since remained registered there. She makes no present claims to bona fide residency at the property in New Canaan.
14. The Respondent maintains that she was a bona fide resident in New Canaan during the 26 years that she was registered there, including the dates challenged by the Complainant. She states her claim on two grounds. First, she claims particular contacts with the town and the state at the times in question. However, she also argues, and puts particular emphasis on, her *lack* of

² After the passage of both the Respondent’s parents, the home is currently held in a trust administered by a relative of the Respondent.

³ The instant matter was brought by the Complainant after this date.

attachments to any other place—such as New York, which the Complainant alleges should have been her true bona fide residence.

15. The Respondent maintains that since graduating from high school and until she terminated her registration, she lived in dozens of places in five states and the District of Columbia—including one state four different times and the District of Columbia four different times—as well as one foreign country. She asserts that she never intended to make any of these other states her permanent home and never did so.
16. There is some evidence here that suggests that the Respondent could have chosen addresses in New York City during both of the relevant elections. The evidence suggests that she maintained an apartment in New York City at the time of the November 5, 2002 general election and that she owned a condominium in New York City at the time of the November 2, 2004 general election. The Respondent argues that as with her other residences during the time in question, her residences in New York City, even the one that she purchased in 2003 and appears to own to this day, were secured by necessity and that she had no personal and/or permanent connection to them like she had to the residence in New Canaan.
17. The closest factual case on point is *Complaint of Gary Amato, North Haven*, File No. 2009-158 (2010). Like here, the allegation was that the respondent in *Amato* did not reside at her parents' property in Connecticut. For reasons related primarily to her husband's employment as an Assistant District Attorney in New York City, the respondent in *Amato* resided in Brooklyn, New York during the elections in which she voted in Connecticut. However, in *Amato*, the respondent there was able to overcome this fact by presenting evidence of residency and legitimate, significant, and continuing attachments to her childhood home and hometown.
18. However, the respondent in *Amato*, unlike here, maintained a *present* claim to bona fide residency at a Connecticut address. That is, the complaint in that case was filed *during* the period in which the respondent in that case maintained a claim to bona fide residency.
19. Here, the Complaint was filed over *four years* after the 2004 vote and over *six years* after the 2002 vote. By the time the instant matter was filed, the Respondent had fully and voluntarily removed herself from the voter rolls well over *two years* earlier.
20. In *Amato*, the complaint therein was brought right after the respondent had cast a ballot in North Haven. Accordingly, the Commission was able to do a full and fair discovery not only into the objective criteria evidencing the respondent's residency in and connection to her family home, but we were also able to assess her *present* attachments to the property and town and her *present* intent to remain.
21. Here, given the passage of time between the alleged votes and the filing of the instant Complaint, the Commission has been put into the position of adjudging

the Respondent's bona fide residency status and, as such, her intent to remain *at the time of the 2002 and 2004 votes*, which was, respectively, over *six and four years after the filing of the instant Complaint*, in a town to which she no longer stakes a claim to bona fide residency.

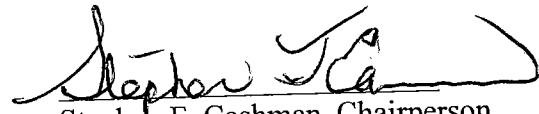
22. Considering the Respondent's claim to bona fide residency relative to her transient lifestyle and in light of the significant passage of time since the alleged offenses, the Commission finds that it cannot make a full and fair determination of the allegations in the instant matter.
23. In light of the above, the Commission finds that there is insufficient evidence in the present matter to substantiate the Complainant's claims.

ORDER

The following Order is recommended on the basis of the aforementioned findings:

No further action is taken.

Adopted this 14th day of October, 2010 at Hartford, Connecticut.



Stephen F. Cashman, Chairperson
By Order of the Commission